

General Information Letter: Capital gain deducted in the computation of Wisconsin taxable income is not subject to double taxation.

March 5, 1999

Dear:

This is in response to your letter dated October 14, 1998 and follow-up letter of December 11, 1998 in which you request a Private Letter Ruling. Please excuse the delay in answering your letters but the Department is extremely busy this time of year. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

As tax preparer for xxxxx xxxxxxxx xxxxx xxxxxxxx, I am requesting a legal ruling on the credit from Schedule CR. I enclose a copy of that schedule. As you can see, Mr. xxxxxxxx had a capital gain of \$xxxxxx on his federal and Illinois return for the gain on the sale of his Wisconsin property. That amount, on his Wisconsin return was taxed at \$xxx. My calculations on Schedule CR are correct according to the instructions on the back of Schedule CR.

Wisconsin has a 60% capital gain exclusion. However, Illinois does not have such an exclusion. Therefore the amount of \$xxxxxx is correct, and Mr. xxxxxxxx should have a credit for taxes paid to other states of \$xxx-not \$xxx.

#### **DISCUSSION**

The interplay of the Illinois Income Tax Act ("IITA") and foreign tax laws is discussed at IITA § 601(b)(3), which states:

(b) Amount payable. In making payment as provided in this section there shall remain payable only the balance of such tax remaining due after giving effect to the following:

(3) Foreign tax. The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year. For purposes of this subsection, no compensation received by a resident which qualifies as compensation paid in this State as determined under Section 304(a)(2)(B) shall be considered income subject to tax by another state or states. The credit provided by this paragraph shall not be allowed if any creditable tax was deducted in determining base income for the taxable year. Any person claiming such credit shall attach a statement in support thereof and shall notify the Director of any refund or reductions in the amount of tax claimed as a credit hereunder all in such manner and at such time as the Department shall by regulations prescribe.

Based upon the decision in the case of Hutchins v. Illinois Department of Revenue, 79 MI-130115 (Cir. Ct. Cook County, 1979), the longstanding policy of the Department has been that because Wisconsin permits a 60% capital gain exclusion but Illinois does not, the capital gain exclusion cannot be said to be taxed by both states. Only the taxable portion of the gain was considered income subject to Wisconsin's income tax. The Department's position is consistent with the above-quoted language from Section 601(b)(3) of the IITA which states that the foreign tax credits are allowed only on a resident's income which is subject to tax in this state and also on the **same income** in another state. Accordingly, the amount of the credit was reduced.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles Matoesian  
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